

JURISGRADIBUS-Articles

ISSN: 2585-3554

January-March, vol. 1, 2025

Article 2

A EUROPEAN INDUSTRIAL POLICY FOR DEFENSE IN TIMES OF WAR EMERGENCY

Elena Hampton

DOI: [10.5281/zenodo.15168313](https://doi.org/10.5281/zenodo.15168313)

Follow this and additional works at:
<https://jurisgradibus.free.nf/index.php/jg?i=1>

Recommended Citation

Hampton, E. (2025). A European industrial policy for defense in times of war emergency. *Juris Gradibus, January-March, vol. 1*, 52-86, Article 2

Available at:
<https://jurisgradibus.free.nf/index.php/jg/issue/view/1>

This article is brought to you for free and open access by CEIJ. It has been accepted for inclusion in Juris Gradibus. For more information, please contact: info.jurisgradibus@gmail.com

Doi: [10.5281/zenodo.15168313](https://doi.org/10.5281/zenodo.15168313)

A EUROPEAN INDUSTRIAL POLICY FOR DEFENSE IN TIMES OF WAR EMERGENCY

Elena Hampton, Ph.D in European Politics, US. Attorney at law

Abstract: The present work aims to investigate, starting from the Ukrainian emergency crisis, the sector of the European defense industrial policy as a step of harmonization and integration in the European context. New programs and new collaborations through supranational cooperation concluded. Peace and security are in the first line of commitment on the part of the European institutions. Funding, research, development, etc. programs open the way for greater integration as a response to every emergency war crisis but also to the construction of a stronger right of the Union in the European defense sector completely different from the past and certainly to a continuous evolution.

Keywords: CSDP; European defense; defense industry; harmonization; European integration; European Union law; war emergency; Ukrainian crisis; EDTIB; EDIRPA; EDIS; ASAP; EDIP; SEAP; FED.

INTRODUCTION

An important step for the Union, from the very beginning, was the integration of foreign policy and security and defense within the European context and beyond. The continuous war, especially the latest one in Ukraine, has called into question many policies of the Union especially that of defense (Blockmans, 2022).

The interventions of the Union, the sanctions against Russia for natural and legal persons have played an important role in the Russian industrial, military complex (Beacillon, 2022) and at the same time has constituted for the Common Security and Defense Policy (CSDP) a greater use towards a European instrument for peace that covers the costs that are connected for military supplies in Ukraine and by Member States, as well as for the evolution of the civil mission EUMAM in Ukraine (Rieppola, 2017)¹

¹Council Decision (CFSP) 2022/638 of 13 April 2022 amending Decision

and the military type EUMAM in Ukraine (Melzer, 2022).²

The continuous war emergencies and the war on the borders of the Union have frightened many states that have felt the need to increase their defense capabilities with various funding thus encouraging the development of investment programs through cross-border cooperation at a level of integration of national markets. The European institutions have tried to build an industrial policy for defense to a Russian-Ukrainian conflict thus representing a geopolitical scenario. The tendency to reduce military spending was a dream of the past and not a reality.³

The war crisis has attempted to adopt tools to promote integration in the defense sector by consolidating

2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine). See also in argument: <https://www.consilium.europa.eu/en/press/press-releases/2024/05/28/eu-security-and-defence-council-sets-out-five-main-priorities/> (Accessed 31 January 2025).

²Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine), ST/12684/2022/INIT, OJ L 270, 18.10.2022, p. 85-91.

³European Defense Agency, Defense Data 2022: Key findings and analysis, p. 3.

indirectly through the European Defense Technological and Industrial Base (EDTIB) strategy the defense of the Member States. This interest has to do with the competences of the Union in industrial matters as a practice that offers a complex stage of evolutionary tendencies to relations with the CFSP and governance techniques to the institutions of the Union.

THE EUROPEAN DEFENSE AGENCY AND THE EUROPEAN DEFENSE FUND BEFORE THE UKRAINIAN CRISIS

Searching for funding and creating a European industrial policy in the defense sector, the European Commission (EC) was enabled to strengthen, through new technologies a European defense, that has found through non-binding acts before the 2000s, a sufficient expression for the times passed (Koutrakos, 2013).⁴

Despite the fact that the crises in the past were strong, as

⁴Green Paper-Defense procurement, COM(2004) 608 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a strategy for a stronger and more competitive European defense industry, COM(2007) 764 final.

the former Yugoslavia case, they were not able to respond directly to a European defense industry thus harmonizing intra-European transfers to military products⁵ that have to do with procurement in the defense sector.⁶

The EC has thus developed a defense industry through various support instruments. Already in 2016, the EC through the communication entitled: “European Defense Action Plan”⁷ identified the needs and investments in the defense industrial sector in the face of a global geopolitical scenario towards an arms race by Member States that were

⁵Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defense-related products within the Community (Text with EEA relevance). OJ L 146, 10.6.2009, p. 1-36.

⁶Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defense and security, and amending Directives 2004/17/EC and 2004/18/EC (Text with EEA relevance). OJ L 216, 20.8.2009, p. 76-136.

⁷Communication from the Commission of 30 November 2016 to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Defense Action Plan, COM(2016) 950 final.

hostile and created collaborative axes for interventions leading to the establishment of a European Fund for Defense and Research and Development of defense products as well as investments for supply chains thus strengthening a single defense market through collaboration between Member States.

The EC has gradually tried to relate the lines of action through pilot projects for the co-financing of research actions, namely the Pilot Project on Defense Research which was managed by the European Defense Agency and by a modest budget of 1.4 million euros for the years 2015-2016. The Union institutions have created experimental programs thus preparing the defense sector (Preparatory Action on Defense Research, PADR) and the European Defense Industrial Development Program (EDIDP).

The EC through research projects has found 90 million euros to activate into the years 2017 and 2019 a selection of projects of granting a funding that was carried out directly from the EC as well as from the European Defense Agency. The EDIDP has established a regulation based on Art. 173 TFEU⁸. The ordinary legislative procedure was based on

⁸Regulation (EU) 2018/1092 of the European Parliament and of the Council

actions for the development phase of defense products and technologies respecting, therefore, the interventions of the PADR in the research phase. The years 2019-2020 the financial endowment was equal to 500 million euros and implemented a direct management at the EC.

The PADR and EDIPD programs have had limiting capacities. They followed the European Defense Fund as an ambitious project financed for a budget cycle responding to a financial framework lasting from 2021 to 2027. The Fund, within the European Defense Action Plan, was established by the EC in 2018⁹, as a legislative procedure, lasting for three years, according to the Regulation (EU) 2021/697.¹⁰ The Regulation was based on Art. 173, par. 3 in the sector of

of 18 July 2018 establishing the European Defense Industrial Development Program aiming at supporting the competitiveness and innovation capacity of the Union's defense industry. PE/28/2018/REV/1. OJ L 200, 7.8.2018, p. 30-43.

⁹Proposal for a REGULATION OF THE European PARLIAMENT AND OF THE COUNCIL establishing the European Defense Fund COM/2018/476 final-2018/0254 (COD).

¹⁰Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defense Fund and repealing Regulation (EU) 2018/1092 (Text with EEA relevance). PE/11/2021/INIT. OJ L 170, 12.5.2021, p. 149-177.

industry and to Art. 182, par. 4, 183 and 188, lett. b) TFEU in the sector of research, technological development and space.

The fund was a financial support. Research and industrial development actions were different from the PADR and the EDIDP thus building a permanent instrument. The Regulation established a financial aid of about eight billion euros for development actions.¹¹ A fund that was executed through calls for tenders and managed by the EC every year. The basis of the whole idea was:

“(...) competitiveness, efficiency and innovation capacity of the European defense industrial and technological base¹² (...) pursued by limiting the number of beneficiaries of the funding to entities based on EU or a third country member of the European Economic Area (EEA) not controlled by third countries or by entities of third countries, except for the possibility of derogations in the presence of guarantees approved by the state in which the company is based (...)”¹³.

The availability of European co-financing was to stimulate

¹¹Art. 4, par. 1 of the Regulation (EU) 2021/697.

¹²Art. 3, par. 1 of the Regulation (EU) 2021/697.

¹³Art. 9 of the regulation (EU) 2021/697.

cross-border cooperation through companies in the research and industrial development phases. It excluded, however, companies of third countries and access to financing companies that are controlled by third countries and by non-European entities, as a development phase towards abroad.

EDIRPA AND ASAP AFTER THE UKRAINIAN CONFLICT

Increasing defense spending after the Ukrainian crisis has become a reality (Heinemann, 2023).¹⁴ It was rebuilt and modernized the military equipment after the transfer of weapons, ammunition to support the war effort.

Unilateral decisions of Member States have increased defense spending. The purchase of equipment has, therefore, reduced the weight of collaborative projects through transnational ones. Production capacity, supply chains of military goods, weapons ammunition have guided defense spending priorities in Member States after the end of the Cold War. In fact, research for development and acquisition of new products in the defense sector in the

¹⁴See for example the European Defense Agency, Defense Data 2022: Key findings and analysis, op. cit.

market was a different reality than in the past.

Already the EC in a communication published a few days before the Russian aggression in Ukraine affirmed that:

“(...) the work of the expert group on the package of financial instruments could emerge new financing solutions that would induce Member States to make more assiduous use of existing joint procurement entities (...)”.¹⁵

Another communication organized by the EC and the High Representative for Foreign Affairs and Security Policy of 18 May 2022 based on shortfalls in investment and the defense sector. It has precisely regulated the task force to facilitate the coordination of procurement needs, the creation of an instrument that strengthens industrial capacity for defense through investment programs in the defense sector thus offering a European framework through short-term emergency logics.

The use of collaborative procurement between Member States to fill the gaps, as a response to the war in Ukraine, has been adopted through the Regulation (EU) 2023/2418. It

¹⁵Communication from the Commission of 15 February 2022 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Commission contribution to European Defense, COM(2022) 60 final, p. 9.

has established a European Defense Industry Reinforcement through the Common Procurement (EDIRPA).¹⁶

A project lasting between 2023 and 2025 with a financial capacity of 300 million euros. The EC has directly managed financial contributions for procurement through at least three Member States. This is a financing that is limited to 15% thus estimating the procurement contract and a percentage that reaches 20% for the additional quantitative acquisitions of products that are intended for Ukraine or Moldova reaching up to 15% of the contract intended for contractors or subcontractors of small and medium-sized enterprises or medium-capitalization companies.¹⁷

These are criteria where the grants have included a number of Member States participating in a joint procurement contributing to the strengthening of the EDTIB as well as the reconstruction, modernization of equipment,

¹⁶Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defense industry through common procurement (EDIRPA). PE/40/2023/REV/1. OJ L, 2023/2418, 26.10.2023.

¹⁷Art. 7, par. 4 of the Regulation (EU) 2023/2418.

participation of small and medium-sized enterprises creating new cross-border cooperation.¹⁸

The EC has played an important role in the development and integration of defense policy as well as being restrictive in terms of financial contributions. The EC could not intervene in procurement procedures and the conclusion of contracts remained a prerogative for the Member States thus unanimously appointing a suitable contracting entity to act in this sector through a public tender.¹⁹

Contractors or subcontractors of companies, that are controlled by third states, are subject to similar conditions foreseen for access to funding by the European Defense Fund. The legal basis for the adoption of the Regulation according to Art. 173, par. 3 TFEU falls within the competences that have to do with support, coordination and final control. According to the Regulation it not only harmonizes the award procedures for joint procurement but also defines the agreement between Member States participating in a contracting entity that has been

¹⁸Art. 11 of the Regulation (EU) 2023/2418.

¹⁹Art. 9, par. 1 of the Regulation (EU) 2023/2418.

designated.²⁰

The EDIRPA followed with a communication of May 2022 the intervention of the European legislator within the field of industrial policy. In such a way, it has responded to the prolonged Russian-Ukrainian conflict. Filling the ammunition and the Ukrainian armed forces in March 2023 was a step of tripartite agreement for the Council. Particularly, it provided Ukraine with one million artillery ammunition within a year.

The Council led Member States to offer an emergency to Ukraine ground ammunition in the artillery sector and missiles from stockpiles that redefine existing orders. In other words, it invited Member States to acquire ammunition, missiles as products of the European defense industry through a project and within the framework of the European Defense Agency, thus acquiring a spirit of collaboration and ammunition.

The Union supported through funding Ukraine, increasing thus the European instrument for a peace in the near future and one of the fundamental principles of the Union

²⁰Art. 9, par. 2 of the Regulation (EU) 2023/2418.

since its birth.²¹

The tripartite approach through agreement from the Council and after request to the EC, that supported the emergencies, increased the capacity of the European defense industry for munitions and missiles.

The EC on 3 May 2023 pursuing Art. 114 and 173, par. 3 TFEU formulated a new proposal for regulation for the production of ammunition (Act in Support of Ammunition Production, ASAP). A regulation where it has considered the legal bases of such a proposal.

Through the use of the ordinary legislative procedure of July of 2023²² the EC has laid the foundations for establishing a co-financing instrument for the production of ammunition and missiles to supply the related raw materials reaching 500 million euros by June of 2025. A financing where the EC managed directly covering 35% thus the costs for the actions that were connected with the

²¹Council Decision (CFSP) 2023/1304 of 26 June 2023 amending Decision (CFSP) 2021/509 establishing a European Peace Facility. ST/9494/2023/INIT. OJ L 161, 27/06/2023, p. 66-67.

²²Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP). PE/46/2023/REV/1. OJ L 185, 24.7.2023, p. 7-25.

capabilities of ammunition and missiles, reaching up to 40% of the eligible costs for actions of a production in the raw material.

Other instruments for the Union and a matter of industrial policy for defense, according to the regulation ASAP, had followed criteria, that determine the rate of financing of small, medium-sized enterprises and were established within the Union thus allocating the Ukraine for goods and products and encouraging a collaboration between at least three Member States and national defense industries contributed to new cross-border cooperation for joint procurement.²³

Cross-border cooperation has configured criteria for the allocation²⁴ thus limiting beneficiaries to enterprises established for Member States that have not been controlled by third countries or by entities established in third countries where they regulate the regulation establishing the European Defense Fund in a similar manner and operating according to the EDIRPA.²⁵

²³Art. 9 of the Regulation (EU) 2023/1525.

²⁴Art. 11, lett. d) of the Regulation (EU) 2023/1525.

²⁵Art. 10 of the Regulation (EU) 2023/1525.

As regards the ASAP, the procedures for issuing production authorizations for munitions and missiles for the supply of components and raw materials²⁶ and the introduction of a regime that complies with the procedures provided for in Directive 2009/81 on security and defense procurement through joint procurement procedures,²⁷ are concluded.

These elements justify Art. 114 TFEU and the directive as pursuant to Art. 173, par. 3 TFEU had competence for the Union in the field of industry excluding therefore the harmonization measures.

The EU made use of the management elements to overcome the hostility of some Member States thus putting in the forefront and imposing and accepting the related orders, which trying to finish in a transparent way the procurement for the Member States.²⁸

²⁶Art. 13 of the Regulation (EU) 2023/1525.

²⁷Art. 14 of the Regulation (EU) 2023/1525.

²⁸Proposal for a REGULATION OF THE European PARLIAMENT AND OF THE COUNCIL on establishing the Act in Support of Ammunition Production. COM/2023/237 final.

A EUROPEAN DEFENSE INDUSTRIAL STRATEGY

The EC and the High Representative in March 2024 proposed a communication for a European Defense Industrial Strategy (EDIS)²⁹ given that the old EDIRPA and ASAP strategies had a temporary nature and did not respond to all crisis situations and especially to serious ones.

Among the objectives was a strategy that goes beyond the logic of emergency where the EDIRPA and ASAP as a structural approach ensured that the defense sector is ready:

“(...) constant preparedness of the Union and its Member States to protect the security of citizens, the integrity of the territory and critical resources or infrastructure, as well as fundamental democratic values and processes (...)”.³⁰

A structural state of European defense, that is measured on

²⁹Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a renewed European Defense Industrial Strategy: Achieving EU readiness through a responsive and resilient European defense industry, 5 March 2024, JOIN(2024) 10 final.

³⁰Communication JOIN(2024) 10 final, op. cit.

various levels such as procurement and on significant amount of military goods do increase the territorial defense capacity for the Member States as well as the development of armaments, that are of new generation. This is an evolutionary step of technology in the defense sector, that continues the war effort on the Ukrainian land as well as any other hotbed of crisis.

Increasing the EDTIB efficiently and competitively puts in close coordination the defense needs of the Member States by increasing collaborative investments to support the demand for the tools needed for security of supply³¹. As regards the shares from multiple Member States, increasing the current 18% to 40% by 2030 is now an open challenge (Wolff, 2024).

The strategy through the proposed regulation establishes a European program for the defense industry (European Defense Industry Program, EDIP) which is part of the complementary actions.³²

³¹Communication JOIN(2024) 10 final, op. cit., p. 7.

³²Proposal for a Regulation of the European Parliament and of the Council establishing the European Defense Industrial Programme and a framework of measures to ensure the timely availability and supply of defense-related

The communication of 2022, EDIP, has sought to achieve some important objectives such as strengthening the competitiveness and reactivity of the EDTIB, improving the capacity of the EDTIB and ensuring the industrial, technological base for the defense of the Ukraine. The proposed regulation based on interventions, that are part of a plurality of objectives, find support in Art. 173 TFEU according to a degree of competition with the EDTIB. Together with Art. 114 TFEU finds the basis for procurement and harmonization rules.

Art. 212 TFEU in the field of economic, financial and technical cooperation with third countries forms the legal basis for the EDIP, as an external component supporting the defense industrial and technological base of the Ukraine. Finally, Art. 322 TFEU finds legal basis in relation to the economic financing provisions and not only.

A complex structure is the combination of central elements of the EDIP where the economic support of the EDTIB applies as an analogous part of those that are foreseen by ASAP and EDIRPA, i.e. as a key of resources that are measured to a residual duration within a pluriennial

products (“EDIP”), COM(2024) 150 final.

financial framework.

ASAP and EDIRPA have also foreseen the attributions that find in charge of the EC to search for European projects that will have common interest to allocate the relative funding.³³

The EDIP also includes the proposal to establish a support fund for companies transforming defense supply chains, such as the FAST. Experimental schemes with the ASAP and EDIRPA have enriched, from an external point of view, the establishment of a support instrument for each war crisis.

Such a proposal is based on a definition of a framework that has created the structures for the European Armament Program (Structures for European Armament Program, SEAP).

The SEAP is not an armament program of the Union but a structure of at least three states, that respond to the demand for defense products through joint procurement, which acquires logistics and maintains services. This instrument reduces transaction costs as well as transnational orders.³⁴

³³Art. 15 of the proposal.

³⁴Art. 22, par. 1 of the proposal.

The proposal of the regulation also includes the discipline that secures supplies for the relevant defense products through prevention of a monitoring of supply chains, where the corrective instruments are oriented for industrial production in the presence of war crises at the time of existence.

The Council is ready to assist the EC in its advisory tasks and in the area of security of supply.

WHAT ARE THE OBSTACLES TO A COMMON STRATEGY?

The European defense industry is characterized by a difficult and complex system but at the same time also ambitious and rich in legislative proposals, thus, creating the problematic nodes for the obstacles.

The factor of the availability of financial resources, through the proposal of the EDIP regulation and the financial system that passes to a financing of one billion euros,³⁵ is an important figure, that includes Member States with hundreds of money and resources that are not contained³⁶

³⁵Art. 5, par. 1, lett. a) of the proposal.

³⁶European Defense Agency, Defense Data 2022: Key findings and analysis, op. cit., p. 3.

in the European budget, thus offering support to the EDTIB, i.e. to national defense markets.

The resources through precise instruments, i.e. the budget of the Union, create a common debt (Rosanna, 2024).³⁷ The model for the collection of contributions is available for the scope of the NextGenEU plan (De Witte, 2021) as a step for a common European defense (Sorgi, Smith-Meyer, 2024).

The Union is not a framework for Member States to cooperate and support the financing for rearmament and the conflict of the Ukraine. The defense of a third state raises doubts but also points especially if this state is not part of the NATO. The latter has also created a fund of one hundred billion in five years to support Ukraine, a considerable amount and in competition with Union resources (Gray, Irish, 2024).

The protectionism of the strategy of interventions proposed within the framework of a European industrial policy is for the defense sector, i.e. the EDTIB, a limit to access at the financing of companies that operate in the Union and at products that create the European internal

³⁷European Defense Agency, President Michel calls for ‘defense bonds’ at the EDA’s Annual Conference 2023, (30 November 2023).

market.

The measures are directed towards the acquisitions of European suppliers, where military goods and platforms acquire for suppliers located in third countries a general spirit, that is not so healthy, especially for the United States. Without doubt military equipment belongs to many Member States of the Union (Fiott, 2019; Maulny, 2024).

The defense industrial sector tends to look favorably for the Member States. Especially the measures, that help the EDTIB to acquire products for the Member States by third countries, serve to create strong and stable ties with alliances, that respond to economic and financial efficiency. The European industrial strategy does not share confidential information that forms impediments to European harmonization and to the domestic defense markets integration (Blanke, Mangiamelli, 2021; Kellerbauer, Klamert, Tomkin, 2024).³⁸

Therefore, objectives of the proposed regulation, through the EC, allows access to sensitive information relating to components, processes, production, etc., a supply chain where the proposal puts Member States in difficulty. The

³⁸See in particular Art. 346, par. 1, TFEU.

communication to states allows the EC to create a map for the supply chains for defense products, when the activity is based on relevant, confidential information provided to companies. The EC thus asks companies for supplementary information, that provides on a voluntary basis.³⁹ A periodic monitoring of companies' capacities in relation to defined products are relevant in the event of a supply crisis, which is based on information that comes from the EC voluntarily.⁴⁰

The information is capable of producing non-military goods in a state of supply crisis according to the consent of the Member State and where the company is established.⁴¹ Achieving objectives for such a strategy lays the foundations for coordination tasks and direct intervention in the European market. Thus, the proposal for EDIP regulation as a mechanism for the proposal of the ASAP, allows to the EC a necessary obligation for companies to accept orders in situations that are in crisis for the supply

³⁹Art. 40, par. 5 of the proposal and the recital n. 54.

⁴⁰Art. 41, parr. 3 and 4 of the proposal.

⁴¹Art. 46, par. 1 of the proposal.

of defense products.⁴²

The ASAP includes as an element the reservations that are expressed by some Member States, suggesting the strengthening of the EC position for the implementation of a defense industrial policy, that continues to prove resistance at various levels and perhaps no solutions in this regard.

DIVISION OF COMPETENCES AND DEFENSE INDUSTRIAL POLICY

The integration technique in the defense sector, through instruments such as FED, ASAP, ADIRPA, EDIP, find a legal basis in policies, that establish an internal market. The legal basis for these instruments, Art. 173, par. 3 TFEU, in industrial policy provides in the research and development sector a space for harmonization for legislation, that establishes an internal market.

Reducing defense markets as a challenge of the past, transparently and precisely based on the communications of the EC and of the High Representative through the related consolidation with the EDTIN, increases the defense

⁴²Art. 47 of the proposal.

capacity of the Member States and constitutes new objectives of evolution of the CSDP. Within the legal spirit of Art. 42, par. 3 TEU the strengthening of defense of the Member States indirectly pursues the use of legal bases, that are not relevant to the CSDP. Thus the institutions in a supranational attempt and with especially difficulty in the fields of industrial policy and of the internal market create a framework where military capabilities in the sector are also under the responsibility of the Member States (Fabbrini, 2024).

The legal bases are related to materials, that respect the CSDP within the context of international agreements with third countries (Ghazaryan, 2022).⁴³

Other consequences that limit the use of the decision-making procedure is a phenomenon of systemic impact in relations with the CFSP, where through precise procedures and according to Art. 24, par. 1 TFEU, follow the

⁴³CJEU, 4 September 2018, C-244/17, *Commission v. Council (Agreement with Kazakhstan)*, ECLI:EU:C:2018:62, published in the electronic Reports of the cases, par. 46. 2 September 2021, C-180/20, *Commission v. Council (Agreement with Armenia)*, ECLI:EU:C:2021:658, published in the electronic Reports of the cases, par. 53.

intergovernmental method. Defense and security policy according to Art. 40 TEU presupposes a separation from other policies (Cannizzaro, 2021). Unlike Art. 47 TEU, it does not have precedence over material policies, which are related to the CFSP.⁴⁴

Material policies, that comply with the CFSP, infiltrate the adopted acts, according to the force of legal bases that are also found in other objectives, that are related to security and defense. This is a phenomenon that limits industrial policy also in the commercial sector, transportation, etc., an institutional practice that sets as an objective the creation of an autonomous strategy (Hoffmeister, 2023).

Trade and defense policy, within the framework of export of goods, strengthen the instrumentality and the achievement of objectives of a foreign policy⁴⁵, where the control of direct foreign investments⁴⁶ for the EC, opens the

⁴⁴Art. 40 and 47 TEU.

⁴⁵Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast). PE/54/2020/REV/2. OJ L 206, 11.6.2021, p. 1-461.

⁴⁶Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign

way for reform and makes it mandatory for states to adopt a mechanism first of all for monitoring and control.⁴⁷

Already the Regulation (EU) 2021/1153 in the transport sector and in transport networks, as a demanding response to military mobility,⁴⁸ is in tune with the CSDP project, within a framework of permanent structured cooperation (PESCO). Thus, the competence of the EC and the High Representative in a space matter since 2023 is focused on a communication oriented towards a European strategy space for defense and security.⁴⁹

direct investments into the Union. PE/72/2018/REV/1. OJ L 79I, 21.3.2019, p. 1-14.

⁴⁷Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (Text with EEA relevance). PE/52/2021/INIT OJ L 249, 14.7.2021, p. 38-81.

⁴⁸Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, op. cit.

⁴⁹Joint Communication to the European Parliament and the Council on the European Union Space Strategy for Security and Defense, JOIN(2023) 9 final.

CONCLUSIONS

The CSDP and material policies imply, in a precise and particular way, a practice to increase the collaboration between Member States and companies through the design of a development that acquires military platforms and other products for the defense. In such a way the Member States accept that the Union operates as a body for financial resources through new rules to a market of defense products, where according to Art. 346 TFEU the Member States have the right/duty to apply the law of the Union towards an integration (Fromont, 2021; De Witte, 2023 Weber, 2023), which seems not to be in conflict with the integrative stages of the Union law.

The intervention of the Union and the NextGenEU plan in recent years, as a new phenomenon of integration through funding, finds implication in the relationship between various actors, between Member States and the Union, between public bodies and beneficiaries and in other policies (Viță, 2017) within the industrial defense sector thus leaving an orientation of choices through a program, that acquires for the Member States a means of disbursement for public resources.

This is a condition with criteria and purposes, that allow a financing rate, that is found in the European defense fund to cooperate through a permanent structured cooperation introduced by the ASAP for products, that are destined for Ukraine and are produced by small and medium-sized European enterprises, as a criterion for awarding subsidies by the instruments under examination. Thus every war emergency in the defense sector represents a very interesting tool for the forms of integration. In fact, it develops the rights of the Union that respond to today's crises.

REFERENCES

- Beaucillon, Ch. (2022). Les sanctions internationales au soutien de l'intégrité territoriale de l'Ukraine: leur effectivité, *Revue française de droit administratif*, 4, 596ss.
- Blanke, H.J., Mangiamelli, S. (2021). *Treaty on the Functioning of the European Union. A commentary*. Springer, Berlin.
- Blockmans, S. (2022). Editorial. The Birth of a Geopolitical EU, *European Foreign Affairs Review*, 27 (2), 155ss.
- Cannizzaro, E. (2021). The Value of the EU International Values, In W.TH. Douma, C. Eckes, P. Van Elsuwege, E. Kassoti, A. Ott, R.A. Wessel (eds.), *The Evolving Nature of EU External Relations Law*. ed. Springer, The Netherlands, 13-35.
- De Witte, B. (2021). The European Union's Covid-19 Recovery Plan: The Legal Engineering Of An Economic Policy Shift. *Common Market Law Review*, 58 (3), 636ss.
- De Witte, B. (2023). Integration through Funding: The Union's Finances as a Policy Instruments. In R. Weber (Ed.), *The Financial Constitution of European Integration: Follow the Money?*. Hart Publishing, Oxford, Oregon, 221-236.
- Fabbrini, F. (2024). European Defense Union ASAP: The Act in Support of Ammunition Production and the development of EU defense capabilities in response to the

war in Ukraine. *European Foreign Affairs Review*, 29, 80ss.

Fiott, D. (2019). The Poison Pill: EU Defense on US Terms?. *EUISS Brief*, 7, 2ss.

Fromont, L. (2021). La conditionnalité des financements octroyés par la Facilité pour la reprise et la résilience, *Revue des Affaires Europeennes*, 4, 772ss.

Ghazaryan, N. (4 May 2022). The centre of gravity test and the CFSP: Continuing the saga with Case C-180/20 Commission v Council (CEPA) on EU/Armenia relations, *EU Law Analysis*:

<https://eulawanalysis.blogspot.com/2022/05/the-centre-of-gravity-test-and-cfsp.html> Accessed 31 January 2025.

Gray, A., Irish, J. (2 April 2024). NATO boss floats 100 billion euro military aid fund for Ukraine. *Reuters*: <https://www.reuters.com/world/europe/nato-boss-floats-100-billion-euro-military-aid-fund-ukraine-2024-04-02/>

Accessed 31 January 2025.

Heinemann, N. (2023, 1st November 2023). Diverging Investments in European Defense: Germany's and Sweden's Policies towards NATO's 2% Commitment, *Atlantic Forum*: <https://www.atlantic-forum.com/atlantica/diverging-investments-in-european-defence-germanys-and-swedens->

[policies-towards-natos-2-commitment](#) Accessed 31 January 2025.

Hoffmeister, F. (2023). Strategic autonomy in the European Union's external relations law. *Common Market Law Review*, 60 (3), 668ss.

Kellerbauer, M., Klamert, M., Tomkin, J. (2024). *Commentary on the European Union treaties and the Charter of fundamental rights*. Oxford University Press, Oxford.

Koutrakos, P. (2013). *The EU Common Security and Defense Policy*. Oxford University Press, Oxford, 252ss.

Maulny, J.P. (September 2023). The Impact of the War in Ukraine on the European Defense Market. *IRIS Policy Paper*: https://www.iris-france.org/wp-content/uploads/2023/09/19_ProgEuropeIndusDef_JPMaulny.pdf Accessed 31 January 2025.

Melzer, A. (19 October 2022). EU Military Mission Is Coming Home', *Verfassungsblog*: <https://verfassungsblog.de/eu-military-mission-is-coming-home/> Accessed 31 January 2025.

Rieppola, M. (2017). The EU Advisory Mission Ukraine: Normative or Strategic Objectives?. *College of Europe EU Diplomacy Paper*, 2, 4ss.

Rosana, G. (4 March 2024). As the EU lays out its first joint defense strategy, could Eurobonds become a reality?, *The Parliament Magazine*:

<https://www.theparliamentmagazine.eu/news/article/as-the-eu-lays-out-its-first-joint-defence-strategy-could-eurobonds-become-a-reality> Accessed 31 January 2025.

Sorgi, G., Smith-Meyer, B. (6 March 2024). Has the EU really just found €400B it could spend on defense?. *Politico Europe*: <https://www.politico.eu/article/eu-emergency-bailout-fund-defense-spending-investment-european-stability-mechanism/> Accessed 31 January 2025.

Viță, V. (2017). Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality. *Cambridge Yearbook of European Legal Studies*, 19, 116-143.

Weber, R. (ed.). (2023). *The Financial Constitution of European Integration: Follow the Money?*. Oxford University Press, Oxford, 221ss.

Wolff, G.B. (19 March 2024). The European defense industrial strategy: important, but raising many questions, *Bruegel*: <https://www.bruegel.org/analysis/european-defence-industrial-strategy-important-raising-many->

[questions](#) Accessed 31 January 2025.